Supreme Court, U.S.
FILED

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No. _____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

STUN-TECH, INC.,

Petitioner,

vs.

RACC INDUSTRIES, INC.,

Respondent.

Petition For A Writ Of Certiorari To The Ohio Eighth Appellate Judicial District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER A FOREIGN JUDGMENT RENDERED IN VIOLATION OF THE REQUIREMENT OF NOTICE UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE PROCEDURAL LAWS OF THE STATE IN WHICH THE FOREIGN JUDGMENT WAS RENDERED IS ENTITLED TO FULL FAITH AND CREDIT RECOGNITION IN THE STATE WHERE THE NON-RESIDENT PARTY SUBJECTED TO THE FOREIGN JUDGMENT IS LOCATED.

LIST OF PARTIES

RACC Industries, Inc. in its capacity as Plaintiff-Appellee and Stun-Tech, Inc. in its capacity as Defendant-Appellant were the only parties in the proceeding before the Ohio Eighth Appellate Judicial District.

Petitioner has no parent or subsidiary company.

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TO THE HONORABLE SUPREME COURT:

Stun-Tech, Inc. hereby petitions for a writ of certiorari to review the judgment and the opinion in this case of the Ohio Eighth Appellate Judicial District.

REPORTS OF OPINIONS BELOW

The opinion of the Ohio Eighth Appellate Judicial District, as of the date of this petition, has not been reported. Other judgment entries rendered by the District Court of Maryland for Prince George's County and the Cuyahoga County Court of Common Pleas have not been reported. The May 17, 1995 judgment entry of the Supreme Court of Ohio is reported at 72 Ohio St. 3d 1518 (1995).

JURISDICTION

The opinion of the Ohio Eighth Appellate Judicial District was entered on December 29, 1994. The Supreme Court of Ohio declined jurisdiction to hear this case on May 17, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, as follows:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .

U.S. Const. amend. XIV, § 1.

The Full Faith and Credit clause to the United States Constitution provides, in pertinent part, as follows:

> Full Faith and Credit shall be given in each State to the public Acts, Records and Judicial Proceedings of every other State . . .

U.S. Const. art. IV, § 1.

Rule 1-101 of the Maryland Rules of Procedure provides, in pertinent part, as follows:

> Title 1 applies to procedure in all courts of this State . . .

Md. R. Civ. P. 1-101.

Rule 1-321(b) of the Maryland Rules of Procedure provides as follows:

> **(b) Party in Default – Exception.** – No pleading or other paper after the original pleading need be served on a party in default for failure to appear except a pleading asserting a new or additional claim for relief against the party which shall be served in accordance with the rules for service of original process.

Md. R. Civ. P. 1-321(b).

Rules 3-341(b) and 3-341(c) of the Maryland Rules of Procedure provide as follows:

> **(b) Within 15 Days of Trial Date and Thereafter.** – Within 15 days of a scheduled trial date or

after trial has commenced, a party may file an amendment to a pleading only by written consent of the adverse party or by leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

(c) Scope. – An amendment may seek to (1) change the nature of the action, (2) set forth a better statement of facts concerning any matter already raised in a pleading, (3) set forth transactions or events that have occurred since the filing of the pleading sought to be amended, (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party so long as one of the original plaintiffs and one of the original defendants remain as parties to the action, (6) add a party or parties, (7) make any other appropriate change. Amendments shall be freely allowed when justice so permits. Errors or defects in a pleading not corrected by an amendment shall be disregarded unless they affect the substantial rights of the parties.

Md. R. Civ. P. 3-341(b) and 3-341(c).

Ohio Revised Code Section 2929.022 provides as follows:

Filing of authenticated copy of foreign judgment; effect.

A copy of any foreign judgment authenticated in accordance with section 1738 of Title 28 of the United States Code, 62 Stat. 947 (1948), may be filed with the clerk of any court of common pleas. The clerk shall treat the foreign

> judgment in the same manner as a judgment of a court of common pleas. A foreign judgment filed pursuant to this section has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of common pleas and may be enforced or satisfied in same manner as a judgment of a court of common pleas.

Ohio Rev. Code Ann. § 2329.022 (Anderson 1991).

Ohio Revised Code Section 2329.023(C) provides as follows:

> (C) No execution or other process for enforcement of a foreign judgment that is filed pursuant to section 2329.022 of the Revised Code shall issue until thirty days after the date the foreign judgment is filed pursuant to that section.

Ohio Rev. Code Ann. § 2329.023(C) (Anderson 1991).

Rule 60(B)(5) of the Ohio Rules of Civil Procedure provides, in pertinent part, as follows:

RULE 60. RELIEF FROM JUDGMENT OR ORDER

. . .

> **(B) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons . . . or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time. . . . A motion under this subdivision (B)

does not affect the finality of a judgment or suspend its operation.

The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules.

Ohio R. Civ. P. 60(B)(5).

STATEMENT OF THE CASE

A. STATEMENT OF THE FACTS

Stun-Tech, Inc. ("Stun-Tech") is incorporated under the laws of the State of Ohio and its principal place of business is located in Bedford Heights, Ohio. Stun-Tech has been in business since 1988 and it is engaged in the manufacture and sale of electronic pulse technology products which are marketed and sold to law enforcement and correctional agencies throughout the United States. Electronic pulse technology products include "stun guns", prisoner restraint belts, electronic shields and related accessory products.

On or about October 1, 1990, Stun-Tech executed a License Agreement whereby it agreed to be a licensee to RACC Industries, Inc. ("RACC"), a Maryland corporation, with a principal place of business in Upper Marlboro, Maryland, whose principals claim to hold a valid patent on a prisoner restraint belt identified in the patent as a "*non-obvious* remotely-activated prisoner restraint apparatus." (emphasis added). Stun-Tech agreed, under the License Agreement, to manufacture and sell a *non-obvious* remotely-activated prisoner restraint apparatus on behalf of RACC. The negotiations for the License Agreement were initiated by RACC and occurred over a period of several months by telephone conference,

correspondence, facsimile and a substantive meeting on September 6, 1990 in Cleveland and Bedford Heights, Ohio between the principals of Stun-Tech and RACC. The device to which the principals of RACC claim to hold a valid patent consisted of only a crude and unmarketable prototype that RACC did not permit Stun-Tech to inspect prior to the execution of the License Agreement. RACC requested Stun-Tech to enter into the License Agreement so that RACC could utilize the expertise of Stun-Tech to develop the device into a product that could be successfully marketed to law enforcement and correctional agencies.

Subsequent to the execution of the License Agreement Stun-Tech developed the prisoner restraint apparatus, without input or assistance from RACC, into a marketable product. Attempts by Stun-Tech to develop a product in compliance with the *non-obvious* claims of the patent held by the principals of RACC were unsuccessful. Stun-Tech currently manufactures and sells two (2) prisoner restraint belt products which are *obvious* belts that do not come within the claims of the patent held by the principals of RACC and which are easily apparent to third parties. Stun-Tech contends that the License Agreement is no longer binding and that it is not obligated to tender further royalty payments to RACC.

On or about May 13, 1992 RACC filed a complaint against Stun-Tech in the District Court of Maryland for Prince George's County (sometimes referred to hereinafter as "the Maryland Court") in the amount of *$9,450* for royalty payments allegedly owed to it under the License Agreement and $500 in attorney fees. Stun-Tech did not file an answer or enter an appearance in the Maryland

Court after perfection of the summons and complaint on or about August 6, 1992. On February 4, 1993, the Maryland Court granted a default judgment against Stun-Tech in the amount of *$19,800* and $20 in court costs in response to an *oral* amendment by RACC to its original complaint at an ex parte hearing that purportedly was made in compliance with Md. R. Civ. P. 3-341(b) and (c). It is undisputed that RACC did not tender notification to Stun-Tech in compliance with Maryland procedural law prior to the ex parte hearing with respect to the intent by RACC to increase its claim for damages.[1] Stun-Tech did not receive notification that RACC had increased its claim for damages by $10,350 until it received written notification from the Maryland Court on April 12, 1993 that the foreign judgment had been rendered. (App., *infra*, 26a).

On September 1, 1993 RACC filed a praecipe, affidavit and certified copy of the Maryland judgment pursuant to Ohio Rev. Code § 2329.022 in the Cuyahoga County Court of Common Pleas. On September 13, 1993, counsel for Stun-Tech filed an entry of appearance, set forth the intent of Stun-Tech to contest recognition of the foreign judgment and requested the trial court to refrain from recognition of the foreign judgment until such time as it had the opportunity to review the response of Stun-Tech which was then being prepared. The Cuyahoga County Court of Common Pleas granted full faith and

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[1] The October 22, 1993 affidavit of Paul S. Blumenthal (App. *infra*, 30a-31a), the attorney for RACC in the Maryland Court, was filed in the Cuyahoga County Court of Common Pleas attached to Plaintiff's Opposition To Defendant's Motion for Relief from Judgment and Motion To Deny Full Faith and Credit Recognition To Void Foreign Judgment.

credit recognition to the foreign judgment on September 23, 1993 (App., *infra*, 27a) before Stun-Tech could complete and file its response. Stun-Tech timely filed its Motion for Relief from Judgment and Motion to Deny Full Faith and Credit Recognition with Brief in Support pursuant to Ohio R. Civ. P. 60(B)(5) ("Motion for Relief from Judgment") on October 4, 1993 which the trial court overruled on January 6, 1994 in a judgment rendered without an opinion.[2] (App., *infra*, 28a). In response thereto, Stun-Tech timely filed an appeal to the Ohio Eighth Appellate Judicial District on January 21, 1994 which affirmed the judgment of the Cuyahoga County Court of Common Pleas on December 29, 1994. (App.,

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[2] Stun-Tech intended to file its response to the foreign judgment within thirty (30) days after it was filed on September 1, 1993 pursuant to the automatic stay provision under Ohio Rev. Code § 2329.023(C). This provision was designed to give the defendant "at least thirty days to prepare defenses to or claim exemptions from execution." Note, *S. 23: Ohio Enacts An Enforcement Of Foreign Judgments Law*, 9 U. Dayton L. Rev. 391, 398 (1984). It is possible that a procedural or statutory basis did not exist under Ohio law to give Stun-Tech standing to file a response to the foreign judgment until after the foreign judgment was granted full faith and credit although Stun-Tech attempted to give the trial court the opportunity to review its arguments and defenses prior thereto. Stun-Tech did possess standing pursuant to Ohio Rev. Code § 2329.022 to file a Motion for Relief from Judgment in response to the September 23, 1993 full faith and credit judgment of the Cuyahoga County Court of Common Pleas. The appeal to the Ohio Eighth Appellate Judicial District was filed in response to the denial by the Cuyahoga County Court of Common Pleas of Stun-Tech's Motion for Relief from Judgment and Stun-Tech did not waive its right to file this appeal which was proper under Ohio law. *See, Colley v. Bazell*, 64 Ohio St. 2d 243, 245-246, 416 N.E. 2d 605 (1980).

infra, 24a). On February 10, 1995, Stun-Tech filed a Memorandum In Support Of Jurisdiction to the Supreme Court of Ohio which declined jurisdiction and dismissed the appeal on May 17, 1995 pursuant to the contention of the Court that the appeal did not involve a substantial constitutional question. (App., *infra*, 29a).

B. PRESENTATION OF FEDERAL QUESTION IN STATE COURT PROCEEDINGS

The federal question that Stun-Tech seeks to review before this Court was initially raised by Stun-Tech in its Motion for Relief from Judgment that was filed in the Cuyahoga County Court of Common Pleas on October 4, 1993. Stun-Tech argued in its Motion that full faith and credit recognition should not have been issued to a void judgment rendered against Stun-Tech by the District Court of Maryland for Prince George's County because the Maryland Court did not have personal jurisdiction to render a default judgment for an amount significantly in excess of that prayed for in the complaint against Stun-Tech, a party in default with respect only to the allegations and prayer for relief set forth in the complaint, without prior notification to that party in compliance with the requirement of notice under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Maryland procedural law, and prior to the entry of the default judgment, of the intention of the other party to significantly increase its claim for damages. Stun-Tech also cited in its Motion case law from this Court with respect to the notice required by due process and how the judgment rendered against Stun-Tech was in

blatant violation of this essential constitutional requirement.

These constitutional arguments were again raised by Stun-Tech in its appellate brief, reply brief and oral argument to the Ohio Eighth Appellate Judicial District. The Appellate Court makes explicit reference to Stun-Tech's due process argument in its opinion (App., *infra*, 2a-3a, 9a, 11a) but rejected this constitutional argument without a specific analysis of the application of due process. (App., *infra*, 12a-14a). Unfortunately, the Appellate Court's rejection of the factual and legal basis in support of the assertion by Stun-Tech that the judgment by the District Court of Maryland for Prince George's County was rendered in violation of Stun-Tech's procedural rights to due process (along with the other federal question asserted, see n.3, *infra*) caused the Appellate Court to reject the assertion by Stun-Tech that the application of full faith and credit recognition by the Cuyahoga County Court of Common Pleas to the Maryland Court judgment was improper. (App., *infra*, 24a).

The foregoing constitutional arguments were again raised by Stun-Tech in its Memorandum In Support of Jurisdiction to the Supreme Court of Ohio. Stun-Tech specifically asserted in its Memorandum that this case involved a foreign judgment rendered in violation of the requirement of notice under the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the improper application subsequent thereto by an Ohio Court of full faith and credit recognition to this constitutionally invalid foreign judgment. The Supreme Court of Ohio declined to hear Stun-Tech's appeal and, in

response, Stun-Tech has petitioned this Court for a writ of certiorari.[3]

ARGUMENT

A FOREIGN JUDGMENT RENDERED IN VIOLATION OF THE REQUIREMENT OF NOTICE UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND THE PROCEDURAL LAWS OF THE STATE IN WHICH THE FOREIGN JUDGMENT WAS RENDERED IS NOT ENTITLED TO FULL FAITH AND CREDIT RECOGNITION IN THE STATE WHERE THE NON-RESIDENT PARTY SUBJECTED TO THE FOREIGN JUDGMENT IS LOCATED.

It is a fundamental rule of law in Maryland that a court may not impose liability or an obligation upon a defendant prior to the establishment by that court of personal jurisdiction over that particular defendant. *Lohman v. Lohman*, 331 Md. 113, 125, 626 A. 2d 384, 390

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[3] Stun-Tech also asserted to the Cuyahoga County Court of Common pleas, the Ohio Eighth Appellate Judicial District and the Supreme Court of Ohio the alternative federal question that its contacts with the State of Maryland were constitutionally insufficient under the Due Process Clause of the Fourteenth Amendment to the United States Constitution to enable Stun-Tech to come within the personal jurisdiction of the District Court of Maryland for Prince George's County. Accordingly, it was also asserted for this reason as well that the judgment rendered against Stun-Tech by the Maryland Court was void and the application of full faith and credit recognition to this void foreign judgment by the Cuyahoga County Court of Common Pleas was likewise improper. This federal question has not been presented by Stun-Tech for review to this Court.

(1993). Due process under Maryland law is satisfied not only by personal service but where there is adherence to the Maryland rules with respect to service of process. *J. Whitson Rogers, Inc. v. Hanley*, 21 Md. App. 383, 392, 319 A. 2d 833, 838-839 (1974). The Court of Appeals of Maryland has also explicitly stated that

> [t]here can be no judgment nor decree *in personam* unless the defendant has been notified of the proceeding by proper summons, for the Court has no jurisdiction over him until such service is properly accomplished, or is waived by a voluntary appearance by the defendant, either personally or through a duly authorized attorney. [citations omitted] For this reason we have repeatedly held that defective service of process is a jurisdictional defect, [citations omitted] and actual knowledge of the proceedings on the part of the defendant will not cure that defect [citations omitted]. (emphasis in original)

Lohman v. Lohman, 331 Md. at 130, 626 A. 2d at 392.

The judgment in the instant case rendered by the District Court of Maryland for Prince George's County was in contravention of Maryland procedural law and Stun-Tech's rights to due process under the Fourteenth Amendment to the United States Constitution. Md. R. Civ. P. 1-321(b) is the procedural rule which specifically *governs this matter* and with which *RACC was not in compliance* when it *significantly* increased its claim for damages against Stun-Tech. This rule states as follows:

> **(b) Party in default – exception** – no pleading or other paper after the original pleading need be served on a party in default for failure to

> appear *except a pleading asserting a new or additional claim for relief against the party which shall be served in accordance with the rules for service of original process.* (Emphasis added).

RACC's increased claim for damages by $10,350 constituted a "new or additional claim for relief" under Md. R. Civ. P. 1-321(b) which necessitated, due to the fact that Stun-Tech did not enter an appearance in the Maryland Court, for service by RACC to Stun-Tech with an amended complaint that identified this "new or additional claim for relief" in accordance with the Maryland rules for service of original process. RACC's failure to do so violated Stun-Tech's due process right to notice and caused the judgment rendered in the District Court of Maryland for Prince George's County to be totally void and of absolutely no legal effect.

Although Maryland case law relevant to this issue was not discovered, courts from other jurisdictions that have addressed this issue have consistently vacated similar judgments and adjudicated them to be void and/or determined that they lacked personal jurisdiction to render the judgment. *See, Household Finance Loan Corp. of Ohio v. Weisman,* 15 Ohio App. 3d 16, 472 N.E. 2d 65 (1984); *Engebretson & Co., Inc. v. Harrison,* 125 Cal. App. 3d 436, 178 Cal. Rptr. 77 (1982); *Smith v. Amarillo Hosp. Dist.,* 672 S.W. 2d 615 (Tex. App. 7 Dist. 1984);[4] *Natl. Dev. Co. v. Triad Holding Corp.,* 131 F.R.D. 408 (S.D.N.Y. 1990), *aff'd,* 930 F. 2d 253 (2d Cir. 1991), *cert. denied,* 502 U.S. 968

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[4] Although the *Smith* Court held the judgment rendered against the defendant was "voidable" it nevertheless vacated the entire judgment.

(1991); *Varnes v. Local 91 Glass Bottle Blowers Assoc. Of The United States And Canada*, 675 F. 2d 1365 (11th Cir. 1982).

It should be noted that in the just cited cases, amended or new complaints that identified the new or additional claims for relief were filed in the Courts and/or service of these pleadings was attempted on the defendants. These cases are in stark contrast to the procedural facts in the instant case where it is undisputed that RACC made *no* such attempt (App. *infra*, 31a) which is blatant in *contravention* of the Maryland Rules of Procedure as well as case law precedent from this Court with respect to the due process requirement of notice.

The Court of Appeals incorrectly determined that RACC properly amended its complaint pursuant to Md. R. Civ. P. 3-341(b) and (c). (App., *infra*, 12a-14a). The adjudication by the Appellate Court was based upon an incorrect interpretation of Maryland procedural law. Md. R. Civ. P. 3-341(b) *only* provides that a party may *file* an amendment to a pleading. The rule, which is stated as follows, does *not* provide for oral amendments to a pleading *nor* does the rule specify that the amended pleading need not be served on the opposing party:

> **(b) Within 15 Days of Trial Date and Thereafter.** Within 15 days of a scheduled trial date or after trial has commenced, a party may *file* an amendment to a pleading only by written consent of the adverse party or by leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

> **(c) Scope**. An amendment may seek to (1) change the nature of the action, (2) set forth a better statement of facts concerning any matter already raised in a pleading, (3) set forth transactions or events that have occurred since the filing of the pleading sought to be amended, (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party so long as one of the original plaintiffs and one of the original defendants remain as parties to the action, (6) add a party or parties, (7) make any other appropriate change. Amendments shall be freely allowed when justice so permits. Errors or defects in a pleading not corrected by an amendment shall be disregarded unless they affect the substantial rights of the parties. (emphasis added)

In contrast, Md. R. Civ. P. 1-321(b) *is applicable to and governs* the determination of this issue because Md. R. Civ. P. 1-101 expressly states that *Title 1 of the Maryland Rules of Procedure* (which includes Md. R. Civ. P. 1-321(b)) applies to procedure in the Maryland Courts which specifically *includes* the District Court of Maryland for Prince George's County. Under Md. R. Civ. P. 1-321(b), RACC was obligated to serve Stun-Tech with an amended complaint in compliance with the Maryland Rules of Procedure for service of original process with respect to the increase in its claim for damages prior to the ex parte hearing because Stun-Tech was in default in response to service of the original complaint. A continuation in alleged delinquent royalty payments from the date the complaint was filed to the date that RACC increased its claim for damages by the oral amendment to its complaint at an ex parte hearing did not negate RACC's

obligation to comply with Md. R. Civ. P. 1-321(b). The evidence submitted to the Court established that Stun-Tech only had knowledge of a pending lawsuit for the principal amount of $9,450.[5] Actual knowledge of the terms and conditions of the License Agreement with respect to dates for payments of disputed royalties is not a substitute for proper service of process with respect to a significant increase in a claim for damages in a matter pending before a court. See *Lohman v Lohman*, 331 Md. at 130, 626 A.2d at 392, (" . . . defective service of process is a jurisdictional defect, [citations omitted] and actual knowledge of the proceedings on the part of the defendant will not cure that defect [citations omitted]") and *Engebretson & Co.*, 125 Cal. App. 3d at 443, 178 Cal. Rptr. at 81, ("The law traditionally has not accepted actual notice as a substitute for proper service of process . . . ").

The petition for a writ of certiorari is worthy of this Court's acceptance, consideration and review. The right to due process under the Fourteenth Amendment to the United States Constitution requires that "any deprivation of life, liberty or property by adjudication be preceded by notice and an opportunity for a hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). The notice required by due process

> in any proceeding which is to be accorded finality is notice reasonably calculated, under all the

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[5] Accordingly, Stun-Tech could not have legally waived its right to prior notification in compliance with Maryland procedural law of the intention by RACC to significantly increase its claim for damages by $10,350.

> circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [citations omitted]. The notice must be of such nature as reasonably to convey the required information [citation omitted] and it must afford a reasonable time for those interested to make their appearance[.] [citations omitted].
>
> . . . [W]hen notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. . . . *Id.* at 314-315.

This Court has consistently held that ["f]ailure to give notice violates the most rudimentary demands of due process of law." *Peralta v. Heights Medical Center, Inc.*, 485 U.S. 80, 84 (1988), quoting *Armstrong v. Manzo*, 380 U.S. 545, 550 (1965). The requirement that a party be notified of a proceeding that affects its legally protected interest is a vital corollary to another fundamental requisite of due process which is the right to be heard. *Schroeder v. City of New York*, 371 U.S. 208, 212 (1962). The "right to be heard [, however,] has little reality or worth unless a defendant is informed that the matter is pending and chooses for [itself] whether to appear or default, acquiesce or contest." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. at 314.

The judgment by the Maryland Court blatantly violated Stun-Tech's due process right to prior notification of the intent by RACC to significantly increase its claim for

damages.[6] Md. R. Civ. P. 1-321(b), which is derived from Fed. R. Civ. P. 5(a) (see note under Md. R. Civ. P. 1-321), was enacted into law to protect the due process right to notification of entities in default, such as Stun-Tech, against whom a new or additional claim for relief has been asserted subsequent to the default. The requirement under Md. R. Civ. P. 1-321(b) is predicated upon a notion of fairness in that a defendant should receive notification of all claims for relief upon which a court may enter judgment against it. 2 Moore's Federal Practice, Paragraph 5.05 at 5-22 (1992); *Varnes v. Local 91 Glass Bottle Blowers Assoc. Of The United States And Canada*, 674 F. 2d

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[6] Clearly, an oral amendment granted by the Maryland Court at an ex parte hearing without notification in compliance with Maryland procedural law prior to the hearing with respect to the intention by RACC to significantly increase its claim for damages by $10,350 did not constitute compliance with the constitutional requirement of "notice reasonably calculated under all the circumstances to apprise [Stun-Tech] of the" intention by RACC to undertake such action. *Id.* at 314. Nor did the oral amendment granted by the Maryland Court at the ex parte hearing give Stun-Tech an opportunity to present its objections to RACC's claim to increase its damages. *Id.* Moreover, the *April 7, 1993* notification from the Maryland Court (App., *infra*, 26a) (which Stun-Tech did not receive *until April 12, 1993*) with respect to the entry of judment against Stun-Tech on February 4, 1993 in the amount of $19,800 and $20 in court costs specified that Stun-Tech only had *until March 6, 1993* to file a motion in the Maryland Court to vacate the judgment. The notification from the Maryland Court, had Stun-Tech chosen to file the judgment within the time frame specified by the Court, did not "afford [Stun-Tech] a reasonable time", *Id.*, to file its motion had that been an option that Stun-Tech had chosen to undertake. The notification by the Maryland Court, at best, constituted "a mere gesture [that was] not due process." *Id.* at 315.

at 1368. The policy of fairness that underlies Stun-Tech's due process right to notification under Md. R. Civ. P. 1-321(b) is expressed further as follows:

> When a complaint is served, the defendant faces the decision to contest the action (perhaps seeking to negotiate a settlement at the same time) or to remain aloof and risk the entry of default. If the defendant fails to appear in the action after valid service of process, it is reasonable to assume the latter course has been chosen. *Thereafter, if the complaint is amended in a way which would materially effect the defendant's decision not to contest the action, this new circumstance should be brought home to the defendant with the same force as the notification of the original action. . . . Service of the amended complaint in a manner provided for service of summons is much more likely to result in actual notice to the defendant that something has occurred requiring reassessment of the decision not to contest the action.* (emphasis added)
>
> *Engebretson & Co.*, 125 Cal. App. 3d at 442-443, 178 Cal. Rptr. at 81.

Stun-Tech was entitled, by law, to prior notification of RACC's claim to a significant increase in damages and the right, if it so chose, to reassess its prior decision and contest in the Maryland Court this "new or additional claim for relief." RACC, by its failure to serve Stun-Tech with a summons and an amended complaint, completely disregarded the mandates of the Maryland Rules of Procedure with respect to service of process as well as public policy which specifies that a defendant should receive notification of all claims for relief which may be adjudicated against it in a court of law. *Varnes v. Local 91 Glass Bottle Blowers Assoc. Of The United States And Canada*, 674

F.2d at 1368.[7] The leave of court granted by the Maryland Court to RACC to orally amend its complaint at an ex parte hearing without prior notification to Stun-Tech did not validate RACC's violation of Stun-Tech's constitutional rights. The failure by the Court of Appeals to recognize this blatant constitutional violation as a meritorious defense to the full faith and credit action constitutes reversible error as well as a complete disregard by the Appellate Court of case law precedent that consistently has adjudicated similar judgments to be void or voidable and/or a determination by the courts for similar reasons that they lacked personal jurisdiction to render the judgment. The holding by the Court of Appeals is also in contravention of established case law precedent by this Court with respect to the principle that judgments entered without notice or service of process are in violation of due process. See *Peralta v. Heights Medical Center*, 485 U.S. 80 (1988); *Armstrong v. Manzo*, 380 U.S. 545 (1965).

Although Article IV, Section 1 of the United States Constitution provides that "Full Faith and Credit shall be given in each state to the public Acts, Records and judicial Proceedings of every other State. . . . ," "[f]ull faith and credit does *not* mean that a judgment of a court in one state is automatically entitled to *enforcement* in another state." *Dressler v. Bowling*, 24 Ohio St. 3d 14, 16,

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[7] "Formal personal service impresses upon a defendant that judicial process has been invoked to effect a coercive remedy against him. Whether the notice be that an action has commenced or that the *moving party has added a new or additional claim for relief against a party for failure to appear, the need for notice is the same.*" (emphasis added). *Id.*

492 N.E. 2d 446, 449 (1986). (Emphasis in original). Full faith and credit should not be granted to the foreign decree if the foreign court did not have jurisdiction to render the judgment. *Underwriters Natl. Assurance Co. v. North Carolina Life And Accident And Health Ins. Guaranty Assoc.*, 455 U.S. 691, 704 (1982). A judgment rendered in violation of due process is void in the state that renders it and "is not entitled to full faith and credit elsewhere." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980).

The judgment rendered by the Maryland Court was properly subjected by Stun-Tech to a collateral attack in the Cuyahoga County Court of Common Pleas inasmuch as the judgment by the Maryland Court with respect to RACC's increased claim for damages was rendered without notice required by due process or Maryland procedural law. As such, the Maryland Court did not obtain personal jurisdiction over Stun-Tech with respect to the judgment that it rendered and the judgment is not entitled to full faith and credit recognition under Ohio Rev. Code § 2329.022 because it is void. This is a meritorious defense to the full faith and credit action which the Court of Appeals incorrectly determined to the contrary which has caused Stun-Tech's constitutional rights to due process to continue to be denied.

CONCLUSION

The violation by RACC of Stun-Tech's due process right to notice prior to the entry of judgment by the Maryland Court with respect to RACC's increased claim for damages caused Stun-Tech to be subjected to a default

judgment in an amount which it otherwise would not have been subjected. The Maryland Court did not obtain personal jurisdiction or the authority to render a default judgment against Stun-Tech in the amended amount requested by RACC. Accordingly, the judgment rendered by the Maryland Court was improperly granted full faith and credit recognition by the Cuyahoga County Court of Common Pleas which the Ohio Eighth Appellate Judicial District improperly affirmed contrary to case law precedent established by this Court.

The issue presented for review in this petition is unique, and, upon information and belief, constitutes a case of first impression in the United States. A decision by the Supreme Court with respect to this issue is necessary to redress the commission of a grievous wrong to a constitutional right that is paramount. A decision by the Supreme Court is also necessary to offer guidance to litigants, attorneys and courts with respect to this issue so that the due process rights and obligations of the parties in the instant case as well as litigants in similar future circumstances can be specifically defined and strictly enforced. Accordingly, for the reasons that have been stated, it is respectfully requested that the petition for a writ of certiorari be granted.

Respectfully submitted,

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COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 66802

RACC INDUSTRIES, INC.	:	
Plaintiff-appellee	:	JOURNAL ENTRY and OPINION
vs.	:	
STUN-TECH, INC.	:	
Defendant-appellant	:	
DATE OF ANNOUNCEMENT OF DECISION	:	DECEMBER 29, 1994
CHARACTER OF PROCEEDING	:	Civil appeal from Court of Common Pleas Case No. 257,432
JUDGMENT	:	AFFIRMED.
DATE OF JOURNALIZATION	:	_____

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DONALD C. NUGENT, J.:

This is an appeal from a final judgment of the Cuyahoga County Court of Common Pleas denying a motion for relief from judgment filed by defendant-appellant Stun-Tech, Inc.

On February 4, 1993, the District Court of Maryland for Prince George's County rendered a default judgment in favor of RACC Industries and against Stun-Tech in the amount of $19,800, plus $20 in court costs. On September 1, 1993, RACC Industries filed a praecipe, affidavit and certified copy of the judgment entry pursuant to R.C. 2329.022 in order to enforce the Maryland judgment. Counsel for Stun-Tech entered an appearance and notice of intent to contest recognition of the Maryland judgment. However, on September 23, 1993, the trial court entered the following judgment:

> Foreign judgment entered on 9/1/93 in civil journal 1658 at page 772. This foreign judgment shall be treated in the same manner as a judgment of the Cuyahoga County Court of Common Pleas pursuant to R.C. 2329.022.

No appeal was taken from the September 23rd final judgment.

On October 21, 1993, Stun-Tech filed its motion for relief from judgment pursuant to Civ.R. 60(B) and motion to deny full faith and credit recognition to void foreign judgment. In support of its motion, Stun-Tech argued that the Maryland judgment in the amount of $19,800 was void as in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Maryland's procedural law because Stun-Tech never

received notification with respect to an increase of RACC Industries' claim for damages. Stun-Tech also argues that the Maryland judgment is void because Stun-Tech never established "sufficient minimum contacts" within the State of Maryland so as to allow a Maryland court to assert personal jurisdiction over Stun-Tech.

The genesis of the instant lawsuit is a dispute over royalties allegedly owed RACC Industries by Stun-Tech pursuant to a licensing agreement. In an affidavit attached to Stun-Tech's motion for relief from judgment, Dennis R. Kaufman, Stun-Tech's president and principal officer, averred that Stun-Tech, an Ohio corporation with its principal place of business located in Bedford Heights, Ohio, was contacted by telephone by Carl Roy II and Brian Willoughby of RACC Industries concerning a patent held by RACC Industries for a "non-obvious remotely-activated prisoner control apparatus."

Stun-Tech has been in business since 1988, and it is engaged in the manufacture and sale of electronic pulse technology products, such as stunguns, prisoner restraint belts, electronic shields and related accessory products which are marketed and sold to law enforcement and correctional agencies throughout the United States. Mr. Roy and Mr. Willoughby informed Mr. Kaufman that the "non-obvious remotely-activated prisoner control apparatus" could restrain dangerous prisoners during trial by means of a non-obvious device that would not impair a prisoner's right to a presumption of innocence in the eyes of the jury. The device consisted of a radio transmitter and receiver attached to a belt to be worn around a prisoner's wrist and underneath the clothing. The device was designed to impart an electronic shock to prisoners

who attempted to escape and/or harm individuals in the courtroom.

Mr. Kaufman was further informed that RACC Industries did not possess the expertise to develop its patent into a final product that could be successfully marketed to law enforcement and correctional agencies or the ability to market the product itself. To that end, RACC Industries, through Mr. Roy and Mr. Willoughby, requested Stun-Tech to enter into a license agreement whereby Stun-Tech, as licensee, would develop the product into one that could successfully be placed into the marketplace.

Over the next few months, Stun-Tech undertook negotiations to conclude a license agreement with RACC Industries by telephone conference, correspondence and facsimile, all of which Stun-Tech conducted from its principal place of business in Bedford Heights, Ohio. On one occasion, Mr. Roy and Mr. Willoughby came to Cleveland, Ohio for an all-day meeting to undertake further negotiations for the license agreement and to inspect Stun-Tech's facilities. Mr. Kaufman further averred that at no time did any principal officer or agent of Stun-Tech ever meet with or negotiate the license agreement with RACC Industries in the State of Maryland.

On October 1, 1990, Stun-Tech executed a license agreement in Cleveland, Ohio whereby Stun-Tech, as licensee, agreed to manufacture and sell, on behalf of RACC Industries, as licensor, a non-obvious remotely-activated prisoner control apparatus. The agreement extended to 1995, with the parties manifesting their intent

to renegotiate said license agreement for the period following 1995. All royalty payments were to be made to RACC Industries in Maryland. Further, the agreement was to be interpreted according to the laws of Maryland, and any disputes arising under the agreement were to be resolved by arbitration in Prince George's County, Maryland.

During the tenure of the agreement, a dispute developed over royalty payments allegedly owed by Stun-Tech to RACC Industries. Subsequently, RACC Industries filed a complaint against Stun-Tech in the District Court of Maryland for Prince George's County, seeking recovery of $9,450 and $500 in attorney fees. Although Stun-Tech received the summons and complaint, Stun-Tech did not file an answer or enter an appearance in the action. Thereafter, on April 12, 1993, Stun-Tech received notice of a default judgment entered against it in the amount of $19,800 and $20 in court costs. Mr. Kaufman averred further that Stun-Tech did not receive service of an amended complaint and summons with respect to RACC Industries' claim for an increase in damages.

In furtherance of Stun-Tech's claim that the Maryland court lacked personal jurisdiction over it, Mr. Kaufman averred as follows:

> 16. Stun-Tech maintains no offices, telephone listings, bank accounts, shareholders, directors, officers, employees, agents or investments in the State of Maryland nor has it ever owned, leased or maintained any property in Maryland.
>
> 17. Stun-Tech's products are at all times manufactured, sold and shipped to its customers from its principal place of business in Bedford

Heights, Ohio and, prior to the relocation of its business in September, 1990, from its principal place of business in Cleveland, Ohio.

18. The component parts of Stun-Tech's products have never been purchased from vendors in the State of Maryland nor has Stun-Tech ever purchased from vendors in the State of Maryland any other products related to its business.

19. At no time has Stun-Tech ever designed or manufactured its products in anticipation of sales specifically to customers in the State of Maryland.

20. Stun-Tech has never directly advertised in Maryland state publications or other publications intended for distribution solely in the State of Maryland. Although Stun-Tech has placed advertisements with respect to its products in national trade journals, these advertisements were not directed specifically toward Maryland customers.

21. Stun-Tech has never actively solicited business by telephone or any other manner in Maryland. All sales by Stun-Tech to Maryland customers (which have been very sporadic and have totalled slightly over approximately one percent (1%) of Stun-Tech's total aggregate sales since the inception of its business in 1988) have at all times been undertaken at the initiation of the customer and not the result of sales efforts by Stun-Tech.

22. Stun-Tech has undertaken two prisoner restraint belt sales to Maryland customers, along with related accessory products and a training session for the use of these products. Both sales occurred at the initation and request of the

Maryland law enforcement entities. One prisoner restraint belt was shipped by Stun-Tech from its principal place of business in Bedford Heights, Ohio to the customer in Maryland and the other prisoner restraint belt was delivered to the customer at Stun-Tech's principal place of business in Bedford Heights, Ohio when the customer's authorized representative came to Stun-Tech for a training session on the use and operation of all the Stun-Tech products that the customer had purchased.

23. Except for the two prisoner restraint belt sales to Maryland customers, all other sales by Stun-Tech to Maryland customers have been for its stun-guns, electronic shields and related accessories such as manuals for the use and operation of these products. These sales were undertaken at the initiation or request of the customer and they were shipped to the customer by Stun-Tech from its principal place of business in Cleveland, Ohio or Bedford Heights, Ohio.

24. I attended, along with my assistant, on behalf of Stun-Tech, an American correctional association trade show in Baltimore, Maryland in early August, 1989 which occurred before Stun-Tech was aware of the existence of RACC and before Stun-Tech had developed its prisoner restraint belts.

25. I attended, along with my assistant, on behalf of Stun-Tech, a training class in Upper Marlboro, Maryland from May 8, 1990 to May 12, 1990. The training session occurred before the License Agreement with RACC became effective on October 1, 1990 and before the prisoner restraint belts were developed by Stun-

Tech. The training sessions were undertaken in Maryland at the request of the Sheriff of Prince George's County and it was undertaken solely to train officers from Maryland and other law enforcement entities from nearby states in the use and operation of Stun-Tech products that had been developed by Stun-Tech and sold to these entities as of that time. Training in prisoner restraint belts were not part of these sessions because the prisoner restraint belts had not yet been developed.

26. The sale of these products did not create any continuing obligations between Stun-Tech and its customers other than a limited two (2) year warranty for the products. Stun-Tech's obligation is concluded (but for the limited two (2) year warranty) after the customer is trained in the proper use and operation of the products and the products, thereafter, are shipped to the customers.

RACC Industries filed its brief in opposition along with supporting documentary evidence showing that Stun-Tech was served summons and complaint through the office of the Secretary of the State of Ohio. RACC Industries' attorney further averred that an *ex parte* hearing on damages was held by the Maryland court. Damages were calculated pursuant to the terms of the licensing agreement, in which Stun-Tech was required to make monthly royalty payments. RACC Industries' attorney explained that in the intervening time between the filing of the complaint and the *ex parte* hearing, further monthly royalty payments had not been paid and interest had accrued thereon. At this time, RACC Industries' attorney orally amended the complaint, with permission

of the court, pursuant to Maryland Rules of Civil Procedure 3-341(b) and (c) to reflect the accrual of the additional monthly payments plus interest.

Based on the foregoing, the trial court overruled Stun-Tech's motion for relief from judgment. Stun-Tech timely appeals, raising the following assignments of error for our review:

I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT OVERRULED STUN-TECH'S MOTION FOR RELIEF FROM JUDGMENT AND MOTION TO DENY FULL FAITH AND CREDIT RECOGNITION TO VOID FOREIGN JUDGMENT WITH BRIEF IN SUPPORT.

II. THE SEPTEMBER 23, 1993 JUDGMENT OF THE TRIAL COURT SHOULD HAVE BEEN VACATED BECAUSE THE FEBRUARY 4, 1993 JUDGMENT AGAINST STUN-TECH RENDERED BY THE DISTRICT COURT OF MARYLAND FOR PRINCE GEORGE'S COUNTY WAS NOT ENTITLED TO FULL FAITH AND CREDIT RECOGNITION BECAUSE IT IS VOID.

In both of appellant's assignments of error, Stun-Tech argues the trial court should have granted its motion for relief from the Maryland judgment. Stun-Tech first argues the Maryland judgment violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and is in violation of the Maryland Rules of Civil Procedure. Next, Stun-Tech argues the Maryland judgment is void since the Maryland court lacked personal jurisdiction over Stun-Tech.

As an initial matter, RACC Industries contends that Stun-Tech has waived its right to collaterally attack the September 23rd judgment recognizing the Maryland judgment by failing to appeal from the September 23rd judgment in a timely fashion. It is true that Stun-Tech failed to file a notice of appeal from the September 23rd judgment; instead, Stun-Tech filed a motion for relief from the September 23rd judgment.

It is well settled that a motion for relief from judgment pursuant to Civ.R. 60(B) cannot be used as a substitute for a direct appeal. See, *Doe v. Trumbull Cty. Children Services Bd.* (1986), 28 Ohio St.3d 128; *Waspe v. Ohio State Dental Bd.* (1985), 27 Ohio App.3d 13; *State, ex rel. Elyria v. Trubey* (1983), 24 Ohio App.3d 44. At the same time, it is well settled that a motion to vacate a void judgment, e.g., one granted without personal or subject matter jurisdiction, need not satisfy the requirements of Civ.R. 60(B) and may be vacated by virtue of the inherent power of the court. *Patton v. Diemer* (1988), 35 Ohio St.3d 68; *Lesowitz & Baskin v. Miller* (1989), 63 Ohio App.3d 401; *Howard v. Cunard Line Ltd.* (1988), 62 Ohio App.3d 285. In this light, it is clear that the Maryland judgment could have been contested on procedural or jurisdictional grounds at the time in which RACC Industries sought full faith and credit recognition of said judgment without resort to Civ.R. 60(B). See, *Litsinger Sign Co. v. American Sign Co.* (1967), 11 Ohio St.2d 1; *Dollar Bank v. The Barnstein Group* (1991), 71 Ohio App.3d 530, fn. 1 ("Although Civ.R. 60[B] cannot be utilized in an Ohio court to vacate a Pennsylvania judgment, the motion raises the issue of whether the Ohio court should refuse to enforce such judgment because of lack of jurisdiction."); *Wilson & Reitman v.*

Berick (Feb. 6, 1982), Cuyahoga App. No. 59884, unreported; *Infern-O-Therm Co. v. Thickston Brothers Equipment Co.* (Apr. 16, 1991), Franklin App. No. 91AP-51, unreported (Civ.R. 60[B] motion raising issue of personal jurisdiction); *Tandy Computer Leasing v. Clark International Security* (June 16, 1988), Cuyahoga App. No. 54926, unreported (same).

Although Stun-Tech entered an appearance indicating its intent to contest the foreign judgment, the lower court granted full faith and credit to such judgment before Stun-Tech filed any motion contesting such judgment. Additionally, no direct appeal was taken from the September 23, 1993 judgment.

It, therefore, appears as if Stun-Tech is using a Civ.R. 60(B) motion as a substitute for a direct appeal. Regardless of whether Stun-Tech waived its right to contest the jurisdiction of the Maryland court by its failure to take a direct appeal from the September 23rd judgment entry, we conclude that the Maryland court did not violate Stun-Tech's due process or procedural rights and did, in fact, possess personal jurisdiction over Stun-Tech. Therefore, the trial court did not abuse its discretion in overruling Stun-Tech's motion for relief from judgment.

In its first assignment of error, Stun-Tech contends that the trial court abused its discretion in overruling its motion to vacate the judgment, giving full faith and credit to the Maryland judgment on the basis that the Maryland court violated Maryland procedural law by entering a default judgment in an amount greater than that prayed for in the complaint. Application of Civ.R. 60(B) is, therefore, appropriate. See, *Kurtz v. Kurtz* (1991),

71 Ohio App.3d 176, 182-83 ("Alleged defect in service by publication in domestic relations case rendered the judgment voidable rather than void, thus making the judgment subject only to a collateral attack pursuant to Civ.R. 60[B]."") To prevail on a motion brought under Civ. R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ. R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time and, where the grounds of relief are Civ. R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken. *GTE Automatic Electric, Inc. v. ARC Industries* (1976), 47 Ohio St.2d 146, paragraph two of syllabus.

A review of the record herein reveals that Stun-Tech has offered no evidence of a valid defense or claim to present if relief is granted other than to claim that the Maryland court lacked personal jurisdiction over it to enter the default judgment. Stun-Tech has failed to produce any evidence of a claim or defense to the increase in the claim of damages sought by RACC Industries.

Further, it appears to this court that the Maryland court properly allowed RACC Industries to increase its claim for relief and followed Maryland Rule of Civil Procedure 1-321(b), which provides:

> Party in Default – Exception. No pleading or other paper after the original pleading need be served on a party in default for failure to appear except a pleading asserting a new or additional claim for relief against the party which shall be

> served in accordance with the rules for service of original process.

See, also, *Ventresca v. Weaver Bros.* (1972), 266 Md. 398, 292 A.2d 656; and *Kaplan v. Bach* (1977), 36 Md.App. 152, 373 A.2d 71.

Additionally, RACC Industries was permitted to orally amend its complaint at trial to increase its prayer for damages to reflect an amount allegedly due and owed by Stun-Tech since the filing of the original pleading. In an affidavit attached to RACC Industries' brief in opposition to Stun-Tech's motion for relief from judgment, RACC Industries' Maryland attorney explained that in the intervening time between the filing of the complaint and the ex parte hearing, further monthly royalty payments had not been paid and interest had accrued thereon. At the *ex parte* hearing, RACC Industries' Maryland attorney orally amended the complaint, with the permission of the court, to reflect the accrual of the additional monthly payments plus interest.

Maryland Civ.R. 3-341 provides, in relevant part:

> **(b) Within 15 Days of Trial Date and Thereafter.** Within 15 days of a scheduled trial date or after trial has commenced, a party may file an amendment to a pleading only by written consent of the adverse party or by *leave of court*. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

> (c) **Scope.** An amendment may seek to (1) change the nature of the action, (2) set forth a better statement of facts concerning any matter already raised in a pleading, (3) *set forth transactions or events that have occurred since the filing of the pleading sought to be amended,* (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party so long as one of the original plaintiffs and one of the original defendants remain as parties to the action, (6) add a party or parties, (7) make any other appropriate change. Amendments shall be freely allowed when justice so permits. Errors or defects in a pleading not corrected by an amendment shall be disregarded unless they affect the substantial rights of the parties. (Emphasis added.)

More importantly, Stun-Tech failed to produce any evidence that it has a meritorious defense to the increase in the amount of damages obtained by RACC Industries other than to claim that the Maryland court lacked personal jurisdiction over it. Stun-Tech does not dispute that it was served with summons and complaint demanding $9,450 in damages and $500 in attorney fees; rather, Stun-Tech argues it did not receive notice of an increase in the demand made by RACC Industries. RACC Industries states that notice was not required since an oral amendment was permitted. In any event, Stun-Tech has failed to set forth any facts that it has a meritorious defense or claim to RACC Industries' increased claim for damages.

The trial court, therefore, did not abuse its discretion in overruling Stun-Tech's motion for relief from judgment. Appellant's first assignment of error is, therefore, overruled.

In its second assignment of error, Stun-Tech argues that the trial court abused its discretion in overruling its motion for relief from the judgment granting full faith and credit to the Maryland judgment on the basis that the Maryland court lacked personal jurisdiction to enter a default judgment. In such case, Stun-Tech would have a meritorious defense or claim against the Maryland judgment and would be entitled to relief from judgment.

Section 1, Art. IV of the United States Constitution requires full faith and credit be given in each state to the judicial proceedings of other states. *Security Pacific Natl. Bank v. Roulette* (1986), 24 Ohio St.3d 17, 18.

In *Speyer v. Continental Sports Cars, Inc.* (1986), 34 Ohio App.3d 272, the Court of Appeals for Franklin County held, at paragraph one of the syllabus:

> A valid judgment rendered in Texas must be recognized in Ohio. Whether the judgment is valid is based on Texas law. A valid judgment rendered in Texas will be recognized and enforced in Ohio even though the strong public policy of Ohio would have precluded recovery in its courts on the original claim.

See, also, Restatement of the Law 2d, Conflict of Laws (1971), 339, Section 117.

Turning our attention, therefore, to Maryland law, we note that the Maryland long arm statute provides as follows:

> (A) Condition. If jurisdiction over a person is based solely upon this section, he may be sued only on a cause of action arising from any act enumerated in this section.

> (B) In General. A court may exercise personal jurisdiction over a person, who directly or by an agent:
>
> (1) transacts any business or performs any character of work or service in the state; * * *

Md. Cts. and Jud. Proc. Code Ann. Section 6-103.

In the present case, we conclude that the Maryland court possessed personal jurisdiction over Stun-Tech pursuant to subsection (B)(1) above.

In *Jason Pharmaceuticals, Inc. v. Jianas Brothers Packaging Co., Inc.* (1993), 94 Md.App. 425, 617 A.2d 1125, the court of special appeals aptly set forth the law concerning Maryland's long arm statute:

> Once personal jurisdiction is established under the long arm statute, the court must then determine whether the exercise of personal jurisdiction is consistent with the Due Process Clause of the Fourteenth Amendment. *Mohamed v. Michael*, 279 Md. 653, 657, 370 A.2d 551 (1977).
>
> To establish personal jurisdiction under s 6-103(b)(1), appellant has the burden of showing that appellee transacted business in Maryland. *McDown v. Criser's Sales & Service*, 48 Md.App. 739, 747, 430 A.2d 91, cert. denied, 290 Md. 718 (1981). The phrase "transacting any business" has been the subject of Maryland cases, but none of those cases share the same factual circumstances as the instant case. See *Mohamed*, 279 Md. at 658-59, 370 A.2d 551 (weeks of negotiating in Maryland to settle a contractual dispute held transacting business); *Harris v. Arlen Properties, Inc.*, 256 Md. 185, 196-97, 260

A.2d 22 (1969) (where developer of shopping center who visited Maryland four times to view a potential site for shopping center and filed for a building permit in Maryland, the Court had "no difficulty in determining that these actions were purposeful actions which constituted 'transacting of business' "); *Novack v. National Hot Rod Ass'n*, 247 Md. 350, 357, 231 A.2d 22 (1967) (inspecting and certifying a racetrack in Maryland is transacting business); *Van Wagenberg v. Van Wagenberg*, 241 Md. 154, 166-67, 215 A.2d ___ (1966) (settlement agreement requiring husband to make continuing payments in New York on behalf of his ex-wife and their child held to be transacting business within the meaning of the New York long arm statute because contract was formed in New York and payments were to be made in New York); *Sleph v. Radtke*, 76 Md.App. 418, 427, 545 A.2d 111, cert. denied, 314 Md. 193, 550 A.2d 381 (1988) (residents of Virginia who executed mortgage for property located in Maryland held to have transacted business).

Appellee argues that it did not transact business in Maryland and that "the instant case involves an unsuccessful effort to enter into a one-time sales transaction." Likewise, the trial court, in granting the motion to dismiss, was under the impression that, where a one-transaction contract is involved, there can be no assertion of personal jurisdiction: "on a one contract deal, the fact that there are phone calls and the fact that there is mail between the States, that isn't going to do it . . . because I don't think that is the law." The trial judge then asked, "Well, in that case then, anybody who makes a contract

with a Maryland business or person or corporation is automatically going to be sued in Maryland?"

The trial judge, at the evidentiary hearing, asked appellant's attorney, "Now, why in the world would that scenario of facts in any way ever suggest to [appellee] that [it was] utilizing Maryland and [was] subject to Maryland jurisdiction?" The trial court further stated that "those transactions, alone, of using the phone, standing alone, and mailing a check, is (sic.) insufficient evidence of transacting business in this state also."

We believe the trial court erred in deciding that, under the facts and circumstances in the instant case, a one-transaction contract with a Maryland corporation is not transacting business within the meaning of s 6-103(b)(1). Therefore, we need not consider appellant's alternative contention that there is personal jurisdiction over appellee in Maryland under s 6-103(b)(4).

The trial court also concluded that the contract was formed in Missouri and was persuaded that this was an important factor weighing against the exercise of personal jurisdiction over appellee: "Well, as far as [appellee was] concerned, the contract was negotiated in Missouri . . . Well, they never left Missouri. Everything they did was in Missouri . . . "

The trial court arrived at this conclusion without interpreting the acceptance term in the proposal which stated that acceptance was to be made by signing the proposal "and returning it to [appellant]." The parties have cited us to no cases interpreting this particular language as it

relates to whether a contract is formed in the state of the one who returns it or the state of the one who receives it, and our own research has not shed any light on this matter. Since this language was not addressed in the briefs or considered by the trial court, we view the conclusion of the trial judge on where the contract was formed far from controlling in the determination of personal jurisdiction. Certainly, there is sufficient evidence indicating that appellee was transacting business within the meaning of s 6-103(b)(1).

In determining whether a party has transacted business, this Court has stated: "A nonresident who has never entered the State . . . may be deemed to have 'transacted business' in the State within the meaning of subsection (b)(1) as long as his or her actions culminate in 'purposeful activity' within the State." *Sleph,* 76 Md.App. at 427, 545 A.2d 111. In addition: "An absence of physical contacts will not defeat the exercise of personal jurisdiction where a commercial actor's efforts have been 'purposefully directed' toward residents of another state." (Citation omitted.) *Sleph,* 76 Md.App. at 429, 545 A.2d 111.

In the instant case, there was sufficient evidence of "purposeful activity" on the part of appellee. Appellee initiated the negotiations over the sale by calling appellant in Maryland and expressing its interest in appellant's machines; engaged in several weeks of negotiations with appellant, which was at all pertinent times located in Maryland; entered into a $700,000 contract, whether valid or invalid, with appellant in Maryland; and sent a down payment of $35,000 into Maryland. We hold that this is sufficient

> evidence of purposeful activity to constitute transacting business within the meaning of s 6-103(b)(1).

Id. at 94 Md.App. 430-34.

Likewise, in the present case, we believe Stun-Tech transacted business in Maryland within the meaning of §6-103(B)(1). The record reveals that after several months of extensive negotiations which, except on one occasion, took place while Stun-Tech was in Ohio and RACC Industries in Maryland, Stun-Tech entered into the pertinent licensing agreement with RACC Industries, a Maryland corporation and resident. The agreement created continuing obligations to RACC Industries by requiring that royalty payments be sent by Stun-Tech to RACC Industries in Maryland over the next five years. Of equal importance is the fact that the agreement was to be interpreted according to Maryland law and any disputes arising thereunder were to be resolved by arbitration in Maryland. Thus, it readily appears that Stun-Tech's commercial efforts were directed toward a resident of the State of Maryland.

Stun-Tech's argument that it did not physically enter the State of Maryland in its transactions involving the agreement misses the point. Maryland courts have recognized that "an absence of physical contacts will not defeat the exercise of personal jurisdiction where a commercial actor's efforts have been 'purposefully directed' toward residents of another state." *Jason Pharmaceuticals, supra,* at 432; *Sleph, supra,* at 429.

Having concluded that Maryland's long arm statute provides a basis to confer the Maryland court with personal jurisdiction over Stun-Tech, this court must next decide whether exercise of personal jurisdiction comports with the requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

In accessing the scope of the Maryland courts' jurisdiction over out-of-state defendants, the Maryland Supreme Court wrote:

> The recent decisions of the Supreme Court which have held that one outside the State need not have been doing business in the State to be subject to suit in the State have established criteria for measuring the increased amenability to local suit.
>
> In *International Shoe Co. v. State of Washington,* 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed., 95, the Supreme Court said:
>
> > "Due process requires only that in order to subject a defendant to a judgment in personaem (sic.), if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional motions of fair play and substantial justice.' "
>
> and
>
> > "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure;"

and

> "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue."

In *Hanson v. Denckla*, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283, 1298, it was stated:

> "It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

See also *McGee v. International Life Insurance Co.*, 355 U.S. 230, 78 S.Ct. 199, 2 L.Ed.2d 223.

See, *Novack v. Natl. Hot Rod Assoc.*, 247 Md. 350, 231 A.2d 22, 25.

Additionally, the U. S. Supreme Court, in *Burger King Corp. v. Rudzewicz* (1985), 471 U.S. 462, 476-77, wrote:

> Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice." * * * Thus courts in "appropriate

> case[s]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." * * * These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. * * * On the other hand, where a defendant who purposefully has directed his activities at forum residence seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.

In the present case, we conclude that Stun-Tech purposely established minimum contacts within the State of Maryland. Stun-Tech engaged in extensive negotiations with RACC Industries, a Maryland corporation and resident, which culminated in a licensing agreement. Additionally, the licensing agreement created continuing obligations in which Stun-Tech was obligated to send royalty payments to RACC Industries in Maryland over the next five years. Moreover, Stun-Tech agreed that the agreement would be interpreted according to Maryland law. Stun-Tech further agreed that any disputes would be settled through arbitration in Maryland. Finally, Stun-Tech has failed to set forth any reasons to indicate that a Maryland court's exercise of jurisdiction would not comport with "fair play and substantial justice." Stun-Tech failed to set forth any reason to indicate that it would

shoulder a substantial burden by having to defend in Maryland. Clearly, Maryland courts have a substantial interest in adjudicating disputes involving their residents, and RACC Industries has a substantial interest in protecting its rights under the licensing agreement. Additionally, it appears that the Maryland court would most efficiently resolve the present suit given that the parties agreed that Maryland law would apply to the licensing agreement. Finally, Ohio courts share in the interest of providing a fair and efficient resolution of disputes involving interstate parties, and such resolution appears to be best achieved by the Maryland court.

We therefore conclude that the Maryland court properly exercised personal jurisdiction over Stun-Tech pursuant to Maryland Civ.R. 6-103(B)(1). Additionally, exercise of personal jurisdiction over Stun-Tech by the Maryland court did not offend the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Through its conduct, Stun-Tech purposely established sufficient minimum contacts within Maryland, and exercise of personal jurisdiction over Stun-Tech by the Maryland court did not offend traditional notions of "fair play and substantial justice."

The trial court, therefore, properly gave full faith and credit to the Maryland judgment pursuant to R.C. 2329.022 and did not abuse its discretion in overruling Stun-Tech's motion for relief from judgment. Civ.R. 60(B).

Appellant's two assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES M. PORTER, J. CONCURS

JAMES D. SWEENEY, P.J.
CONCURS IN JUDGMENT ONLY

(Filed Dec. 29, 1994)

/s/ Donald C. Nugent
JUDGE
DONALD C. NUGENT

N.B. This entry is made pursuant to the third sentence of Rule 22(D), Ohio Rules of Appellate Procedure. This is an announcement of decision (see Rule 26). Ten (10) days from the date hereof, this document will be stamped to indicate journalization, at which time it will become the judgment and order of the court and time period for review will begin to run.

(Seal) DISTRICT COURT OF MARYLAND FOR PRINCE GEORGE'S COUNTY 0502
COURTHOUSE, BOURNE WING (V)
UPPER MARLBORO MD 20772-3042

CIVIL CASE NO: 0014522 – 92
COMPLAINT NO: 001

TO: STUNTECH INC
SERVE: DENNIS KAUFMAN
23860 MILES RD
BEDFORD HGTS, OH 44128

RACC INDUSTRIES INC VS. STUNTECH INC

DATE: 04/07/93

AFFIDAVIT JUDGMENT ENTERED

ON FEBRUARY 04, 1993 THIS COURT ENTERED AN AFFIDAVIT JUDGMENT IN FAVOR OF THE PLAINTIFF IN THE ABOVE CASE IN THE AMOUNT OF $19800.00, ATTORNEY'S FEES OF $0.00, COSTS OF $20.00 AND PRE-JUDGMENT INTEREST OF $0.00 PLUS POST-JUDGMENT INTEREST AT LEGAL RATE.

THE DEFENDANT HAS UNTIL MARCH 06, 1993 TO FILE A MOTION TO VACATE THIS JUDGMENT, STATING A FACTUAL AND LEGAL BASIS FOR A DEFENSE.

THE PLAINTIFF TO ENFORCE THIS JUDGMENT MAY FILE FOR A LIEN ON ANY REAL PROPERTY OWNED BY THE DEFENDANT.

CUYAHOGA COUNTY
COURT OF COMMON PLEAS
GERALD E. FUERST
CLERK OF COURTS
JUSTICE CENTER – COURT TOWER
CLEVELAND, OHIO 44113

CASE CV-257432 SEP. 29, 1993

RACC INDUSTRIES INC

VS.

STUNTECH INC

JUDGE

AURELIUS, WILLIAM E.

FILING DATE 09/23/93 FOREIGN JUDGMENT ENTERED ON 9/1/93 IN CIVIL JOURNAL 1658 PG 772. THIS FOREIGN JUDGMENT SHALL BE TREATED IN THE SAME MANNER AS A JUDGMENT OF THE CUYAHOGA COURT OF COMMON PLEAS PURSUANT TO R. C. 2329.022. FINAL. VOL 1666 PG 56 NOTICE ISSUED. CASE DISMISSED WITH PREJUDICE 09/23/93

CUYAHOGA COUNTY
COURT OF COMMON PLEAS
GERALD E. FUERST
CLERK OF COURTS
JUSTICE CENTER – COURT TOWER
CLEVELAND, OHIO 44113

CASE CV-257432 JAN. 11, 1994

RACC INDUSTRIES INC

VS.

STUNTECH INC

JUDGE

AURELIUS, WILLIAM E.

FILING DATE 01/06/94 DEFT'S MOTION FILED 10/4/93 FOR RELIEF FROM JUDGMENT IS OVERRULED. TO DENY FULL FAITH AND CREDIT RECOGNITION TO VOID FOREIGN JUDGMENT WITH BRIEF IN SUPPORT IS OVERRULED. VOL 1697 PG 841 NOTICE ISSUED

The Supreme Court of Ohio

1995 TERM

To wit: May 17, 1995

RACC Industries, Inc., Appellee,	:	Case No. 95-305
v.	:	ENTRY
Stun-Tech, Inc., Appellant.	:	

Upon consideration of the jurisdictional memoranda filed in this case, the court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Ward & Associates.

(Cuyahoga County Court of Appeals; No. 66802)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

RACC INDUSTRIES, INC.	)	
Plaintiff	)	Case No. 257432
	)	Judge
v.	)	William E. Aurelius
STUN-TECH, INC.	)	
Defendant.	)	

AFFIDAVIT OF PAUL S. BLUMENTHAL

Paul S. Blumenthal, being of full age and duly sworn upon his oath, deposes and says:

1. I am an attorney with the law firm of Paul S. Blumenthal & Associates, licensed in the State of Maryland, and having personal knowledge of this matter and I am duly authorized to make this affidavit.

2. I am counsel for RACC Industries, Inc. (hereinafter RACC) in the District Court of Prince George's County, Maryland in the case captioned *RACC Industries, Inc. v. Stun-Tech Inc.* (hereinafter "Stun-Tech"), Case No. 14522-92.

3. The initial Complaint filed by RACC in the Maryland case contained an *ad damnum* clause praying for relief in the amount of Nine Thousand, Four Hundred and Fifty Dollars ($9,450.00) and in accordance with Maryland procedural law was served upon the Secretary of State for the State of Ohio.

4. Defendant failed to file an Answer in the case, and a default judgment was entered on October 29, 1992 subject to *ex parte* proof of damages.

5. On February 4, 1993 the Court held an *ex parte* proof hearing. The damages of the case were calculated pursuant to the terms of a contract in which Defendant was required to make monthly payments to Plaintiff. In the intervening time between filing the Complaint and the *ex parte* hearing, further monthly payments had not been paid, and monthly interest had accrued. At this time, pursuant to Maryland Rule of Civil Procedure 3-341(b) and (c) I orally amended the original Complaint with the permission of the Court. No consent on the part of Defendant was required, and there was no written pleading to be served upon Defendant.

/s/ Paul S. Blumenthal
Paul S. Blumenthal

Anne Arundel County)
) ss:
State of Maryland)

On this 22nd day of October, 1993, Paul S. Blumenthal came before me who is known by me to be the person described in and who executed the foregoing instrument and states that the Affidavit of Paul S. Blumenthal is true to the best of his knowledge and belief.

/s/ Illegible
NOTARY PUBLIC
MY COMMISSION EXPIRES: Illegible

Sworn to and subscribed before me, this 22 day of October, 1993.